



August 11, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Qwest Communications International Inc. and CenturyTel, Inc. d/b/a
CenturyLink, Applications for Transfer of Control, WC Docket No. 10-110**

Ex Parte Presentation

Dear Ms. Dortch:

CenturyLink, Inc. (“CenturyLink”) and Qwest Communications International Inc. (“Qwest”) submit this letter to address certain new arguments raised in reply comments filed separately on July 27, 2010 by: (i) New Edge Network, Inc. (“New Edge”); and (ii) Level 3 Communications, LLC (“Level 3”).¹ While these arguments are procedurally improper, as they do not respond to matters raised at the comment stage in this proceeding,² CenturyLink and Qwest address these arguments here in order to ensure the completeness and accuracy of the record.

New Edge. In its reply comments, New Edge criticizes for the first time CenturyLink’s use of the EASE operational support system (“OSS”), and asks the Commission to condition approval of the proposed transaction on Qwest’s retention of its existing OSS (in lieu of EASE).³ There is no valid basis for granting this request. CenturyLink and Qwest already have stated that they have no present intent to replace their respective OSS.⁴ Rather, the parties will conduct a

¹ This letter does not attempt to rebut these reply comments in their entirety, and should not be construed as an admission with respect to matters not addressed herein.

² See 47 C.F.R. § 1.45(c); Public Notice, WC Docket No. 10-110, at 5 (May 28, 2010) (“New issues may not be raised in responses or replies.”).

³ See Reply Comments of New Edge Network, Inc., WC Docket No. 10-110 (Jul. 27, 2010) (“New Edge Reply Comments”).

⁴ See Reply Comments of CenturyLink, Inc. and Qwest Communications International Inc., WC Docket No. 10-110, at Exh. 1, ¶ 6 (Jul. 27, 2010).



comprehensive review before making any decision to alter existing systems, and will give CLEC customers ample and adequate notice of any future changes, consistent with the parties' legal obligations and accepted business practices.⁵ Moreover, New Edge's analysis rests on a number of factual misconceptions. For example:

- New Edge asserts that EASE is an inherently defective OSS because FairPoint and Frontier have had issues with their OSS, which New Edge erroneously characterizes as "EASE" systems.⁶ In fact, while CenturyLink has built its ordering platform on a purchased software framework, EASE is a proprietary CenturyLink ordering application and is *not* the same OSS used by FairPoint or Frontier. CenturyLink's system uses interfaces, business rules, and extensive back-office integration designed by CenturyLink, which are unique to the company. To the extent there were issues with the OSS used by FairPoint or Frontier, those issues are irrelevant here.
- New Edge asserts that "EASE does not provide real-time trouble ticketing or status availability."⁷ However, this is simply because EASE is an *ordering system*, and is not designed to handle those functions, in real-time or otherwise.
- New Edge asserts that "a fully functional API has not been made available to New Edge for access to further functionality."⁸ This statement is simply untrue; upon request, CenturyLink provides a real-time interface for wholesale ordering based on the Universal Ordering Model industry standard, in addition to existing batch and web-based interfaces.
- New Edge asserts that following the CenturyTel/Embarq merger, "CenturyLink had no proactive training for CLECs on the [EASE] system."⁹ Again, this statement is simply untrue. At least sixty days prior to the phased implementation of EASE, CenturyLink notified each CLEC customer of the pending transition. Moreover, CenturyLink made available online training modules with respect to the new system, which remain accessible today.
- New Edge claims that there were "serious operational problems" with EASE following the CenturyTel/Embarq merger, and expresses its "understanding that the

⁵ *Id.* at Exh. 1, ¶ 7.

⁶ *See* New Edge Reply Comments at 4.

⁷ *Id.* at 4-7.

⁸ *Id.*

⁹ *Id.* at 5.

problems were related to the ability of the EASE system to handle the increased flow of orders that resulted from the CenturyTel/Embarq merger.”¹⁰ However, any issues New Edge may have experienced in the operation of EASE had nothing to do with the merger or any increase in customers handled by the system. Moreover, CenturyLink met individually with New Edge after it began utilizing EASE to address questions and concerns and supplement the training materials that had been provided.

In short, New Edge’s comments rely on a shaky factual foundation, and accordingly should not be credited by the Commission.

Level 3. In its reply comments, Level 3 claims for the first time that the proposed transaction would permit CenturyLink to create a rural competitive local exchange carrier (“CLEC”) subsidiary that could enter into adjacent Qwest markets and engage in traffic pumping schemes,¹¹ while charging interstate access rates above those maintained by Qwest under the “rural exemption” set forth in the Commission’s rules.¹² Level 3 asserts that this poses a “novel” issue for the Commission, but it is unclear why Level 3 sees any issue at all.

To begin with, CenturyLink is not the first rural local exchange carrier to purchase lines in an adjacent non-rural territory, so there is no “novelty” in this transaction. Moreover, the plain language of Section 61.26(e) limits the rural exemption to “a rural CLEC *competing* with a non-rural ILEC;” following consummation of the proposed transaction, CenturyLink will *own* Qwest. Nor does Level 3 provide any evidence for its assumption that the post-merger company would have an incentive to engage in traffic pumping. On the contrary, as one of the nation’s largest providers of long distance services, the post-merger company will have a strong incentive to eliminate, rather than create, such arbitrage schemes. Indeed, Qwest has repeatedly challenged—before state regulators, federal courts, and this Commission—exactly the type of arbitrage about which Level 3 expresses concern.¹³ And, Level 3 itself acknowledges that

¹⁰ *Id.*

¹¹ In particular, Level 3 claims that the post-merger company will have an incentive to create a rural CLEC and move “conference call, chat line, adult entertainment or other high volume customers” to that new entity. *See* Reply Comments of Level 3 Communications, LLC, WC Docket No. 10-110, at 13 (Jul. 27, 2010) (“Level 3 Reply Comments”).

¹² *Id.* at 13-14 (Jul. 27, 2010). *See also* 47 C.F.R. § 61.26(e).

¹³ *See, e.g., Qwest Communications Corporation, Complainant v. Farmers and Merchants Mutual Telephone Company*, Order on Reconsideration, 23 FCC Rcd 1615 (2008).

“Qwest has led the charge in the battle against traffic pumpers.”¹⁴ In any event, we note that the Commission has reserved the right to take corrective action in the event that a party’s actions constitute “the improper exploitation” of the rural exemption.¹⁵ Level 3’s concerns thus offer no basis for the Commission to impose merger conditions.

Level 3 also claims that the public interest demands the imposition on CenturyLink and Qwest of conditions to address alleged issues involving “virtual NXX” traffic.¹⁶ As Level 3 itself acknowledges, though, these issues have been pending for years before various state commissions and federal courts.¹⁷ As such, these issues clearly are not merger-specific, and provide no basis for the Commission to impose merger conditions.¹⁸ Rather, these issues should be addressed on a prospective basis as part of the comprehensive intercarrier compensation reform envisioned in the National Broadband Plan.¹⁹ CenturyLink and Qwest would welcome the opportunity to address “virtual NXX” issues in that context, with greater industry participation, and thus a more realistic opportunity of achieving meaningful intercarrier compensation reform. In contrast, there is no occasion for the Commission to intervene in ongoing disputes pending before state commissions and state and federal courts. As Level 3 acknowledges, some of these disputes have been pending for years with a complex procedural history, often turning on state commission decisions and interpretations of applicable interconnection agreements.²⁰

¹⁴ Level 3 Reply Comments at 12.

¹⁵ *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order, 16 FCC Rcd 9923, at ¶ 77 (2001).

¹⁶ Level 3 Reply Comments at 7-10.

¹⁷ *Id.* at 7.

¹⁸ *See, e.g., Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915, at ¶ 141 (2009) (conditions must be narrowly tailored to address transaction-specific harm).

¹⁹ National Broadband Plan at 145.

²⁰ As Qwest has discussed elsewhere, Level 3 inaccurately characterizes applicable legal precedent. Indeed, the D.C. Circuit’s recent decision in *Core Communications v. FCC* confirms Qwest’s position that reciprocal compensation applies only to calls placed to ISPs located in the caller’s local calling area. 592 F.3d 139 (D.C. Cir. 2010). Qwest’s position is also bolstered by the First Circuit’s recent decision in *Global NAPS V*, affirming the award of access charges to Verizon New England for the origination of VNXX ISP traffic. *Global Naps, Inc. v. Verizon New England Inc.*, 603 F.3d 71 (2010).



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Please contact the undersigned should you have any questions.

Sincerely,

/s/ David C. Bartlett
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Vice President, Federal Government Affairs

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